

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

German Vasquez, et al.,

NO. C 06-00708 JW

Plaintiffs,

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

v.

China Delight Restaurant, et al.,

Defendants.

German Lainez Vasques ("Vasquez") and Rosa Cruz ("Cruz"), filed this action against Willie Huang ("Huang") and China Delight Restaurant (collectively, "Defendants") for violations of the Fair Labor Standard Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, and other state law claims. The full background and factual allegations of this case may be found in the Court's September 28, 2006 Order denying the Defendants' motion to dismiss. (hereafter, "September 28 Order," Docket Item No. 26.)

In its September 28 Order, the Court denied Defendants' motion to dismiss without prejudice to be renewed after full disclosure of the relevant copies of Defendants' tax returns. Defendants have now disclosed the tax returns for the years 2001, 2002, 2003, and 2005 and move to dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction. (hereafter, "Motion," Docket Item No. 28.) Plaintiffs have filed a statement of non-opposition to Defendants' motion. (See Docket Item No. 33.) The Court found it appropriate to take the motion under submission without oral arguments. See Civ. L. R. 7-1(b).

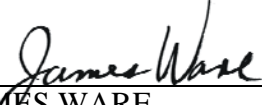
1 Plaintiffs allege that Defendants violated the Fair Labor Standard Act by failing to pay them
2 minimum wage and overtime during their employment in the years of 2001 to 2005. The FLSA
3 requires payment of minimum wage and overtime, prohibits child labor, and applies to every
4 enterprise that

- 5 1) has employees who in any workweek are engaged in commerce or in the production
6 of goods for commerce, or that has employees handling, selling or otherwise working
7 on goods or materials that have been moved in or produced for commerce by any
8 person; and
9 2) whose annual gross volume of sales made or business done is not less than \$500,000.

10 29 U.S.C. §§ 203, 206-07. Upon the Court's order, Defendants have submitted clear and convincing
11 evidence of their annual gross volume sales for the years 2001 to 2005. Defendants Schedule Cs, as
12 submitted to the Internal Revenue Service under penalty of perjury, show annual gross income of
13 less than \$300,000. (Motion, Ex. D.) Since the FLSA is applicable to enterprises with gross volume
14 sales of \$500,000 or greater, the Court lacks subject matter jurisdiction of this action.

15 In light of this evidence, and Plaintiffs' non-opposition to the motion, the Court GRANTS
16 Defendants' motion to dismiss with prejudice with respect to Plaintiffs' Fair Labor Standard Act
17 claim (Claim 2). The Court declines to exercise supplemental jurisdiction over Plaintiffs' state law
18 claims. These claims are dismissed without prejudice and Plaintiffs may refile them in the state
19 court.

20 Dated: November 21, 2006



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Adam Wang waqw@sbcglobal.net
3 Haeyoung Lee HYLLAW@AOL.COM

4 **Dated: November 21, 2006**

Richard W. Wieking, Clerk

5
6 **By: /s/ JW Chambers**

Elizabeth Garcia
Courtroom Deputy